

**BEFORE THE ALCOHOLIC BEVERAGE CONTROL APPEALS BOARD
OF THE STATE OF CALIFORNIA**

AB-8663

File: 20-266099 Reg: 05061222

7-ELEVEN, INC., and RAJVINDER SINGH, dba 7-Eleven #2174-26659
16919 Pacific Coast Highway, Sunset Beach, CA,
Appellants/Licensees

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

Administrative Law Judge at the Dept. Hearing: John W. Lewis

Appeals Board Hearing: September 4, 2008
Los Angeles, CA

ISSUED: DECEMBER 3, 2008

7-Eleven, Inc., and Rajvinder Singh, doing business as 7-Eleven #2174-26659 (appellants), appeal from a decision of the Department of Alcoholic Beverage Control¹ which suspended their license for 10 days for their clerk, Tarem Singh, having sold a six-pack of Corona beer, an alcoholic beverage, to Antonio Vasquez, a 19-year-old Department minor decoy, a violation of Business and Professions Code section 25658, subdivision (a).

Appearances on appeal include appellants 7-Eleven, Inc., and Rajvinder Singh, appearing through their counsel, Ralph B. Saltsman, Stephen W. Solomon, and Lori W. Brogin, and the Department of Alcoholic Beverage Control, appearing through its counsel, Jennifer Cottrell.

¹ The decision of the Department, dated November 14, 2006, is set forth in the appendix.

PROCEDURAL HISTORY

Appellants' off-sale beer and wine license was issued on November 24, 1991. On November 9, 2005, the Department instituted an accusation against appellants charging that, on September 24, 2005, appellants' clerk, Tarem Singh (the clerk), sold an alcoholic beverage to 19-year-old Antonio Vasquez. Although not noted in the accusation, Vasquez was working as a minor decoy for the Department at the time.

An administrative hearing was held on September 14, 2006, at which time documentary evidence was received, and testimony concerning the sale was presented by Vasquez (the decoy) and by Jennifer Ward, a Department investigator. Subsequent to the hearing, the Department issued its decision which determined that the violation charged had been proven, and no defense had been established.

Appellants filed an appeal making the following contention: the Department violated the APA's restrictions on ex parte communications.

DISCUSSION

Appellant contends that the Department communicated with its decision maker on an ex parte basis, in violation of the APA. Appellant cites the decision of the California Supreme Court in *Department of Alcoholic Beverage Control v. Alcoholic Beverage Control Appeals Board/Quintanar* (2006) 40 Cal.4th 1[50 Cal.Rptr. 585], and decisions of other District Court of Appeal decisions dealing with the same issue.

The Department's brief, without conceding any of the issues raised in appellant's opening brief, states that a review of the file indicates that the matter should be remanded to the Department "for disposition pursuant to" (Dep. Br., p.1) *Quintanar*, *supra*.

We see no reason not to accept the Department's suggestion. The matter raises issues addressed in the Board's many decisions involving *Quintanar*-related issues.

ORDER

This matter is remanded to the Department for disposition, in accordance with the Department's suggestion.²

FRED ARMENDARIZ, CHAIRMAN
TINA FRANK, MEMBER
ALCOHOLIC BEVERAGE CONTROL
APPEALS BOARD

²This order of remand is filed in accordance with Business and Professions Code section 23085, and does not constitute a final order within the meaning of Business and Professions Code section 23089.